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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A. U., et al., Persons Coming Under
the Juvenile Court Law.

B184805
(Los Angeles County
Super. Ct. No. CK06318)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GLORIA U.,

Defendant and Appellant.

Appeal from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and Liana Serobian, Associate County Counsel, for Plaintiff and Respondent.

Gloria U., mother of two minors, challenges the juvenile court's order removing the children from her care and placing them with their father. (Welf. & Inst. Code, § 361, subd. (c).)¹ Mother, incarcerated in state prison, argues that the court should have placed the children with her in a drug treatment facility for inmates and their children. Finding no error, we affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Petitioner Gloria U. and her husband Nicolas U., Sr., are the parents of seven-year old A.U. and five-year old N.U. Mother has abused drugs for almost 20 years, and has been involved with the Department of Children and Family Services (DCFS) for over 10 years. In 1993, mother lost custody of two children (from a different father) who were born drug-exposed. She failed to comply with court-ordered reunification services. It was alleged that both parents tested positive for marijuana at N.U.'s birth. Mother refused voluntary family maintenance services at that time. DCFS received five additional referrals on the family alleging emotional and physical abuse and general neglect. Two of the referrals for general neglect were substantiated. In November 2001, the family entered into a voluntary family maintenance agreement with DCFS involving general counseling, parenting, and substance abuse counseling and random drug testing.

Mother has a record of arrests and convictions beginning in 1987, including numerous arrests for the possession of controlled substances. Both parents lied to a social worker during a January 2005 visit, claiming that mother was an aunt assisting with the children's care. They told the social worker that the children's mother lived in New York.

The couple separated in early 2005 when father took the children with him to a shelter. He testified that mother left the family for weeks at a time and was having an affair with another man. Mother removed A. U. from the shelter without father's permission. Father found A.U. by contacting a friend of mother's and learning that

¹ All further statutory references are to the Welfare and Institutions Code.

mother had been arrested and incarcerated for forgery. The sheriffs told father that A.U. was in DCFS custody. Although she was six years old, A.U. had not been enrolled in school or seen a doctor.

On March 24, 2005, DCFS filed a dependency petition alleging that mother placed the children at risk of physical and emotional harm under section 300, subdivisions (b), (c), and (j), on the grounds that petitioner had a long history of substance abuse including the use of methamphetamine and that petitioner's two other children (from a different father) were former dependents of the juvenile court system. At a hearing, the juvenile court detained A.U. and released N.U. to his father's care. The court ordered DCFS to provide family maintenance services to father and reunification services to mother, including at least weekly telephone calls and visits while she was incarcerated within a reasonable distance. On April 25, 2005, the court ordered A.U. released to father and N.U. to remain released to father, conditioned on father drug testing clean, attending treatment programs, and keeping DCFS advised of his address and phone number. DCFS opposed placement with father, arguing that he had failed to protect the children from mother's longtime drug abuse and had drug problems himself, drove N.U. to school using a suspended license, and failed to keep DCFS informed of his address.

Father also has an arrest record, but it appears the most recent arrest was a DUI in 1987. Father admitted to using marijuana and cocaine in high school. He recently passed several drug tests. DCFS required father to participate in a treatment program because he allowed the children to be exposed to mother's drug use, not because DCFS believed him to be a current user. The social worker testified that father has made good progress complying with family maintenance services. He currently is employed, has enrolled the children in good schools, and is attending a treatment program. Father lives with the children in a 90-day shelter called Project ACHIEVE, which provides shelter and case management services to homeless families. The program assists residents with financial planning, job development, and housing placement. The social worker reported that father's room at the shelter was fully furnished, the refrigerator was filled with food and drinks, and the dresser contained children's clothes.

The juvenile court held a disposition hearing on June 7, 2005. By the time of the hearing, mother was incarcerated at a women's prison in Chowchilla. She and father appeared at the hearing and testified. Mother pled no contest to an amended version of the petition. Her attorney joined in the plea and waivers and stipulated to the juvenile court's finding that there was a factual basis for the plea. As sustained, the amended petition alleged that mother was incapable of caring for the children because of her drug abuse and that father failed to take adequate action to protect the children. The amended petition further stated that mother used illicit drugs during two previous pregnancies.

At the conclusion of the hearing, the juvenile court declared the children dependents of the juvenile court under section 300 and placed them with the father. The juvenile court found substantial danger existed to the children's physical and mental health in the care of the mother. The juvenile court also ordered DCFS to provide family maintenance services to father and family reunification services to mother. Mother filed a timely appeal.

DISCUSSION

Mother's main contention on appeal is that the trial court erred by removing the children from her custody. She argues that the children should have been placed with her in a residential drug program during her incarceration.

Findings supporting a removal order are subject to the substantial evidence standard of review. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214; *In re Mark L.* (2001) 94 Cal.App.4th 573, 581, fn. 5.) Section 361, subdivision (c) sets the standard for removal from parental custody. That section provides that a child may not be taken "from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, . . ." unless, based upon clear and convincing evidence, there was "a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor . . . and there are no reasonable means by which the minor's physical health [could] be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) On a challenge to an order

removing a dependent child from his or her parent, we view the record in the light most favorable to the order. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.)

DCFS contends that the juvenile court could have declined to place the children with their mother upon a showing of possible detriment. It argues that the stricter standard of section 361, subdivision (c)—clear and convincing evidence of substantial danger to the children—does not apply because neither A.U. nor N.U. was in the physical custody of mother when the petition was filed. DCFS cites *In re Angelica M.* (1985) 170 Cal.App.3d 210, 214 to support this contention. In that case, the court held that section 361, subdivision (b) (now subdivision (c)) is inapplicable unless the child is in the physical custody of the parent. (*Ibid.*) We need not decide that issue here, since under either standard, the requisite showing was made.

The juvenile court applied the higher standard to find clear and convincing evidence under section 361, subdivision (c), that substantial danger existed to the children's physical and mental health if they were placed in mother's care and that DCFS provided reasonable services to prevent removal. Substantial evidence supports the juvenile court's findings.

Mother has used drugs for almost 20 years. She has a lengthy criminal history (from 1987 to the present) and DCFS involvement related to her drug use. In April 2005, she admitted to a social worker: "I first started using drugs when I was 23, when my mother passed away. Methemphetamines [*sic*] and marijuana. That's all I ever used for about three years. Then, I was clean . . . for [seven] years and then I did drugs for another year and a half. I've used drugs on and off throughout my life. Anytime there has been a problem, drugs would be my escape. The last time I used . . . was [in] January, right after you guys . . . came out. Before that was August when I buried my sister. I used drugs August through January when we . . . began arguing over finances."

N.U. was born drug-exposed, and mother refused to participate in voluntary family maintenance services at that time. She attended a treatment program later that year, but was unsuccessful. The family moved frequently between hotels and shelters and failed to

enroll A.U. in school. When she was arrested, mother left A.U. with a friend who did not want to care for her. Further, mother previously lost custody of two older children because they were born drug-exposed and she failed to comply with the reunification program.

At the June disposition hearing, the social worker recommended that the children be released to their father and that mother receive reunification services. The social worker testified that mother remains in danger of a drug relapse because “she has not learned the coping skills to have a sober lifestyle.” She also testified that mother’s completion of 72 hours of classes about substance abuse and family relationships was insufficient to help resolve the drug problems. Mother contends that the social worker failed to investigate her progress in the classes, but the social worker stated her opinion clearly—that 72 hours of classroom instruction was insufficient to treat long-term drug abuse, particularly because mother was unsuccessful in her last treatment program. Moreover, mother testified that drugs were available in her current placement and that they would probably be available in the family program. She also admitted that she had used drugs in front of the children.

Mother contends that DCFS did not adequately investigate the available inmate child programs—Family Foundation, Patterns, and Family House—before recommending removal. At the June hearing, mother testified that the criminal court approved her transfer to the Family Foundation program, conditioned on the juvenile court ordering the children placed with her. The social worker adequately investigated the programs. She contacted mother’s prison counselor who explained that the programs are open facilities, allowing residents to come and go freely. The social worker also obtained written materials from the Family Foundation program and was familiar with similar programs because of her work with other clients. Based on her investigation, the social worker concluded that mother had not made sufficient progress with her drug problem to enter this type of open facility. The transcript demonstrates that the juvenile court considered the treatment programs as alternatives to removal, but concluded they were not appropriate.

Mother also argues that placement with the father in a shelter presents a greater risk to the children's well-being than placement with her in a treatment program. The evidence does not support her contention. Father appeared willing and able to care for the children. He was in compliance with all aspects of the family maintenance agreement—attending drug treatment programs, testing negative for drugs, and enrolling the children in school. Further, the social worker visited the shelter and found the living arrangements satisfactory. The juvenile court expressed concern that father maintain his sobriety, but appeared satisfied that the weekly treatment program would address this issue. In sum, substantial evidence supports the juvenile court's decision to place the children with father, contingent on his continued participation in parenting and drug classes, and weekly drug testing.

Finally, substantial evidence supports the court's express finding that reasonable efforts were made to prevent or eliminate the need for removal. (See § 361, subd. (d); see also *In re Javier G.* (2006) 137 Cal.App.4th 453, 463-464.) DCFS has been involved with the family for approximately six years. During this time, it offered substantial family maintenance services and stayed in close contact with the parents. In fact, the court commended the social worker for doing an "outstanding job researching this case, looking into the possibilities, following up on what's going on with the father and actively participating, ensuring the stability of the release to the father and even though it was done over the department's objection, the work that worker has done on this case is what has made the release to the father the suitable, the home of father order possible" Despite DCFS's efforts, mother has not demonstrated an ability to maintain sobriety or a suitable home for the children.

We conclude that the juvenile court did not err in removing the children from mother's custody and placing them with father.

DISPOSITION

The dispositional order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

HASTINGS, J.*

*Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.